IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT PETITION No. 21618 of 1998

Between:

1. T.Padmavathi Devi
2. K.Anuradha
3. K.R.L.Kameswari
4. R.Saraswathi Devi
5. N.C.V. Bharathi
6. A. Subba Ratnam
7. Lakshmi Natarajan
8. K.Ravindranath
9. P.Nagabhushna Rao
10. V.B.V.S.Prabha

..... PETITIONERS

AND

1. Government of Andhra Pradesh, rep. by its
its Secretary, Education Department, Secre-
tariat, Hyderabad.
2. Commissioner and Director of School Education,
A.P., Hyderabad.
3. Regional Joint Director of Education, Kakinada.

4. District Educational Officer, East Godavary,

Kakinada.

5. Secretary and Correspondent/Executive Officer,

S.K.V.T. English Medium High School, Rajahmundry.

6. N.Santha Devi, Teacher, V.T.High School, Rajah-

mundry.

7. M.S.L.Vasantha Kumari, Teacher, V.T.High School,

Rajahmundry.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to examine the records relating to G.O.Ms.No.301, dated 25-9-1997, the Memo No.814/PS-1/92-10 Education, dated 2-5-1998 and the information and service particulars of all the petitioners as well as the proceedings of transfer issued in Rc.No.159/A1/97, dated 15-7-1998 of the 4th respondent, declare that the said issuance of the said order of transfer at a time when our cases for regularization and release of grant are pending before the 2nd respondent and the committee constituted by him as illegal and consequently issue a Writ of Mandamus or any other appropriate writ, order or directions directing the 2nd respondent to place the entire information and particulars of the petitioner's appointments before the committee for the purpose of regularization in an aided post and release of the arrears of aid and to regularize their services in the aided posts with all consequential benefits.

Counsel for the Petitioners : Mr. RAMA RAO PHILKHANA

Counsel for the Respondents 1 to 4 : GP FOR SCHOOL EDUCATION

Counsel for Respondent No.5: Mr. Metta Chandrasekhar Rao

Counsel for Respondents 6&7: None appeared

The Court made the following :

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JUDGMENT:

This writ petition is filed challenging the Proceedings in Rc.No.159/A1/97, dated 15-7-1998 of the 4th respondent and to direct the 2nd respondent to place the entire information and particulars of the petitioners' appointments before the committee for the purpose of regularization in aided posts and release of arrears of aid and also to regularize the services of the petitioners in the aided posts with all consequential benefits.

Petitioners 1,2,7 and 10 were appointed by the Management of the 5th respondent prior to the issuance of rules in G.O.Ms.No.524, Education, dated 20-12-1998. The remaining petitioners were appointed during 20-12-1988 and 1-1-1994. According to the petitioners, they were appointed by the management of the 5th respondent in unaided posts to which proposals for approval were submitted by the 5th respondent and the same are pending with the 2nd respondent. While the matters are pending, the 4th respondent by his Proceedings dated 15-7-1998 transferred respondents 6 and 7 from V.T.High School, Rajahmundry to the 5th respondent-School as they are surplus in the said School. Aggrieved by the same, the petitioners filed this writ petition challenging the order transferring respondents 6 and 7 to the 5th respondent-school and seeking regularization of their services and direction to the 2nd respondent to place the entire information and particulars of the appointment before the committee constituted for the purpose of regularization in aided posts and release of grant-in-aid, arrears of aid and all consequential benefits.

Respondents 1 to 4 have filed counter affidavit stating that the appointment of petitioners is without following any procedure and without subjecting to any selection process. The vacancies were not notified to the Employment Exchange nor advertised. The appointments of petitioners were against the non-sanctioned unaided posts in unapproved sections. The Department is not aware of the appointment of petitioners made by the 5th respondent. The 5th respondent did not submit any proposal/intimation to the Department regarding the appointment of petitioners and petitioners were paid by the Management from its own funds. Even if

such appointments were made against unaided sanctioned posts, the same should be treated as vacant by operation of sub-rule (7) of Rule 15 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools) Rules,1988 issued in the said G.O.Ms.No.524, dated 20-12-1988. It is also stated that in pursuance of the issuance of G.O.Ms.No.301, dated 25-9-1997, the irregular appointments made by the private managements against aided sanctioned posts were considered by the committee constituted in the said G.O. for regularization of their appointments. The appointment of petitioners is not against any sanctioned posts and the 5th respondent did not submit proposal/records indicating the service particulars of the petitioners in a proper format to be placed before the committee constituted in the said G.O.Ms.No.301, dated 25-9-1997. Under the rationalization programme, it was found that two posts were surplus in V.T.High School, Rajahmundry and the said posts along with incumbents were transferred to the 5th respondent-school by the impugned proceedings dated 15-7-1998 and that at this stage, the petitioners filed this writ petition and it cannot be entertained.

Counter affidavit has also been filed by the 5th respondent stating *inter alia* that the petitioners are working as unaided Teachers and the school was admitted to grant-in-aid in 1989-90. Out of 40 sections, the 3rd respondent by his Proceedings dated 13-6-1987 and 16-6-1987 approved 30 sections and out of them 24 sections were admitted to grant-in-aid. The services of the teachers, who are covered by the grant-in-aid, were regularized from the date of their appointment, but the services of some of the petitioners, in spite of their existence prior to the issuance of G.O.Ms.No.1, dated 1-1-1994 were not covered by the grant-in-aid due to non-admittance of six approved sections. Further, certain vacancies arose from 1995 to 1999. Pursuant to G.O.Ms.No.301, dated 25-9-1997, particulars of petitioners 1,2,7 and 10 were submitted and the particulars of the remaining petitioners were submitted as per the interim orders of this Court. There is no harm to petitioners because of the transfer of respondents 6 and 7 to their School as they are not disrupting the claim of the petitioners by occupying the existing vacancies. It is also stated that the petitioners have put in about ten years of service as unaided teachers and at this stage, they cannot secure any aided or Government posts due to age restriction and it is a struggle for their existence. The provisions laid down in G.O.Ms.No.301, dated 25-9-1997 are applicable to the petitioners. In view of the above facts, the 5th respondent

prays that the services of the petitioners may be regularized by considering their qualification, long service and the good performance of the petitioners.

Learned counsel for the petitioners brought to the notice of this Court, the decision of a Division Bench of this Court in **K.C. HIGH SCHOOL, GUNTUR v. GOVT. OF A.P.** in which it was held as under:

1. The Government will constitute a committee of officials either region-wise or state-wise which will go into the performance, service record and basic qualifications of the teachers, who have been irregularly appointed by the private managements concerned contrary to G.O.Ms.No.323, (Education Rules) dated 2012-1988. The Managements (educational agencies) shall produce before the committee the relevant record and information so as to enable the committee to judge the suitability of the candidates to be continued. Any information available with the Managements with regard to the performance of the teachers so appointed will be placed before the Committee. The committee shall interview the teachers if deemed necessary. It is, however, made clear that the Committee shall have due regard to the experience gained by the teachers during this interregnum.

2. The process of scrutiny by the committee shall be completed within a period of four months from the date of receipt of this judgment.

3. The respondents concerned will extend the benefit of grant-in-aid for the posts held by these teachers, to the teachers found suitable for continuance, with effect from 1-4-1997 provided they have been appointed against clear vacancies and sanctioned posts.

4. As far as those teachers whose appointments are once approved by the competent officer of Education Department but later on the approval was withdrawn without notice on the ground that the procedure as per Rule 15 had not bee followed, they shall be continued unless any subsequent disqualification comes in their way. They shall be paid salaries from out of the State funds from 1.1.1997 onwards.

W.P.No.14316 of 1992 wherein the appointment of P.Ruth Catherine in Salvation Army Elementary School, Vemuru is in issue falls within this category.

5. The above directions will apply *mutatis mutandis* to non-teaching staff, who were irregularly appointed during the relevant period.

6. For the intervening period during which the teaching/non-teaching staff worked, the Managements are liable to pay salaries and the scale of salary should be worked out as per mutual negotiations.

7. The arrears of salaries as above should be paid or grant-in-aid be released within six months from the date of receipt of judgment."

and submitted that by the above Judgment, this Court directed the Management to produce all the relevant particulars of the teachers, who were irregularly appointed, before the committee so constituted to enable the committee to judge the suitability of candidates to be continued and directed the committee to interview the teachers, if deemed necessary. The 5th respondent admitted that all the particulars were

forwarded by the Management, but the committee had not so far interviewed the petitioners and in view of the same, the petitioners filed W.P.M.P.Nos.25929 and 25930 of 1998 and this Court directed the 5th respondent to place the service particulars of the petitioners before the 2nd respondent for placing the same before the committee. Though the committee constituted in G.O.Ms.No.301, dated 25-9-1997 was withdrawn under G.O.Ms.No.93, dated 3-12-1999, it is incumbent upon the authorities to place the matter before the committee, which is deemed to be in existence till it was withdrawn under the said G.O.Ms.No.93.

On the other hand, the learned Government Pleader contends that this Court gave direction only for the process of scrutiny by a committee within four weeks from the date of receipt of the order and all matters which were placed before the committee as directed by this Court were scrutinized. As the cases of the petitioners were not before the committee, the petitioners cannot complain for non-implementation of orders. Learned Government Pleader also contends that as per the policy of the Government in the said G.O.Ms.No.93, State Level Committee, in its meeting, considered 202 candidates for regularization and approved 142 candidates and the petitioners are not entitled for regularization and their cases were, therefore, not considered.

Be that as it may, admittedly, in this case, petitioners have been working ranging from 5 to 11 years as on the date of filing of the writ petition itself and by now it is more than 15 years. The interim order was made by this Court on 29-6-1999 directing the respondent-management to submit proposals to the 4th respondent, who in turn, shall place the matter before the committee for consideration of regularization of services of petitioners. However, the said proposals were sent by the Management to the 4th respondent on 18-1-2000. Further, G.O.Ms.No.93 was issued much prior to the sending of proposals by the management i.e. on 18-1-2000. Therefore, the official respondents cannot be faulted with for non-consideration of the case of the petitioners either on merits under G.O.Ms.No.301, dated 25-9-1997 or otherwise than on facts.

It is very pathetic case where the 5th respondent-management asserts that the petitioners have put in service ranging between 5 to 11 years as unaided teachers

and at this stage, they cannot secure aided or Government posts due to age restriction and it is a struggle for their existence. G.O.Ms.No.301 is applicable to the petitioners. Further, it was contended that considering the qualification, long service and the good performance of petitioners, their services may be regularized in the regular vacancies that arose in the school. It is further asserted that there were 6 approved sections in the school and vacancies have arisen between 1-7-1995 and 21-8-1998 due to promotion and retirement of Secondary Grade Assistants in the school. Thus, there are sufficient number of vacancies available in the school to accommodate the petitioners in the aided posts. On the other hand, the Government simply contends that the irregular appointments made by the private managements against the aided posts was considered by a committee constituted in G.O.Ms.No.301 and the case of the petitioners could not be taken up for consideration for the reason that the proposals were submitted on 18-1-2000 by the management, by which time, G.O.Ms.No.301, dated 25-9-1997 was rescinded and G.O.Ms.No.93, dated 3-12-1999 had taken care of the situation. Even otherwise, the appointments of petitioners by the 5th respondent was not within the knowledge of the Department and no proposals were sent and no intimation was given to the Department. Petitioners were appointed against the posts in unaided and unapproved sections; therefore, they have no right whatsoever.

In the above backdrop, it can only be said that it is a case of compassion and sympathy, which require to be extended by the Education Department in regularizing the services of the petitioners, since the Management recommended for consideration of their cases in accordance with G.O.Ms.No.301 prior to its withdrawal in respect of petitioners 1,2,7 and 10 and in respect of other petitioners, pursuant to the interim directions of this Court. They had put in about 15 years of service as on date and according to the management, they have good performance and are eligible for being considered as regular teachers. The management asserted that there are vacancies available for which the petitioners are entitled to be absorbed as per their qualification and service.

Learned counsel for the petitioner drawn attention of this Court to the judgment in **K.C.HIGH SCHOOL**'s case (1 supra) which it was held as under:

> ".....A humane and realistic approach consistent with the spirit underlying Article 21 read with the Directive Principle embodied in Article 41 of the Constitution permeates the said circulars. The basic difference between the appointments made by the petitioner-schools and the categories of employees covered by G.O.Ms.No.212 is that the appointments in the former case were made contrary to the statutory rules,

> whereas in the latter case, the appointments were in violation of executive instructions. That way, the cases of the petitioners may not stand exactly on the same footing as *ad hoc* and daily rated employees employed in public sector. Leaving apart this difference, the facts of the present cases give rise to more or less a similar situation calling for pragmatic, rational and compassionate approach and remedial action. The factual scenario does not warrant a raw and harsh treatment to the irregularly recruited teachers. Taking the precedential route, instances are not lacking where the services of the candidates appointed irregularly were directed to be continued keeping in view their long service and also the hardship that would be caused by throwing them out of employment, after a long lapse of time. Reference may be made to the Judgment of the Supreme Court in *H.C. Puttaswamy vs. Hon'ble Chief Justice of Karnataka (*AIR 1991 SC 295)."

and submitted that even if G.O.Ms.No.301 was withdrawn, the case of the petitioners cannot be left over in the middle and their case cannot be be made infructuous. In fact, even if G.O.Ms.No.301 is annulled, under G.O.Ms.No.60, dated 28-11-1996, there was no necessity to constitute any selection committee, since the petitioners were all appointed by a duly constituted selection committee of the respondent-school and they are qualified and performing duties attached to their respective posts as such. Even otherwise, before issuance of G.O.Ms.No.301, the selection process was contemplated for regularization of the services of the unaided teachers against aided vacancies as per G.O.Ms.No.524, dated 20-12-1988. In fact, this G.O. was in force till 31-12-1993. Therefore, petitioners are entitled for consideration for regular absorption against aided vacancies, which arose in the respondent-school under the old G.Os. As they were appointed prior to 31-12-1993 their cases could have been considered under G.O.Ms.No.524 or under G.O.Ms.No.301 as directed by this court by way of interim order. Either way, the petitioners cannot be denied their legitimate right for being considered for regularization of their services in the 5th respondent-school against aided vacancies.

Learned counsel for the petitioners also brought to the notice of this Court Judgments of this Court in W.P.No.12136 of 1998, dated 29-4-1998 and Contempt Case No.1160 of 2000, dated 13-9-2001 and the consequential proceedings dated 11-4-2002 and 18-4-2002 issued by the 2nd respondent regularizing the services of the petitioners therein. In W.P.No.12136 of 1998 it was held as under:

> "With the consent of the learned counsel for the petitioners and the learned Government Pleader, the writ petition is disposed of with a direction to the respondents that the case of the petitioners for absorption into aided vacancies in 5th respondent High School shall be considered and disposed of in accordance with G.O.Ms.No.301, dated 25th September, 1997. However, until final decision is taken in the matter, the petitioners shall be permitted to continue in service and the posts, which are being held by them, shall be filled up by any outside candidates."

In C.C.No.1160 of 2000, this Court observed as under:

> "…..Learned counsel for the petitioner Mr.V.Jogayya Sarma has taken me through clause © of G.O.Ms.No.301. Clause (c) of the said G.O. reads as under:
>
> > (C). The respondents concerned will extend the benefit of Grant-in-aid for the posts held by these teachers found suitable for continuance with effect from 1-4-1997 provided they have been appointed against clear vacancies and sanctioned posts.
>
> By reading clause (c) of the said G.O., it is evident that a person working as a teacher continuously and if such teacher is found to be suitable and if such teacher has been appointed in the clear vacancy and sanctioned post, the G.O.Ms.No.301 will apply.
>
> The counsel for the respondents submitted that this G.O. is meant only for grant-in-aid posts and not for unaided posts. This court is not in agreement with the said submission of the learned counsel for the respondents 1 to 4. Therefore, to give one more opportunity to the respondents, this Court directs the respondents to reconsider the claim of the petitioner with reference to clause (c) of the G.O.Ms.No.301, dated 25-9-1997 within a period of three months from today.
>
> The management is directed to send the proposals accordingly to the respondent No.3.
>
> With these directions, the Contempt Case is closed."

A reading of the above would show that clause (3) of the guidelines issued by the Division Bench of this Court in **K.C. HIGH SCHOOL**'s case (1 supra) were sought to be interpreted and was understood that the extension of benefit of grant-in-aid for the posts held by the teachers are meant for those who are found suitable for continuance with effect from 1-4-1997. The words 'provided they have been appointed against clear vacancies and sanctioned posts' must be understood that the question of appointment of such like teachers would be only against unaided vacancies. May be, they need to be approved. In this case, the management itself has stated that in all there were 30 sections and 24 sections were admitted to grant-in-aid and 6 sections were not admitted to grant-in-aid, though they were approved. Thus, the petitioners are working against these six sections, which were approved by the authorities, which is not denied. Once there is an approval of six sections, may be unaided they are also entitled to be considered as per the Judgment of a Division Bench of this Court. Unfortunately, the case of the petitioners was not placed before the selection committee for approval as per the directions of this Court

and also as per G.O.Ms.No.301. The withdrawal of G.O.Ms.No.301, dated 25-9-1997 has no consequence in case of the petitioners, since there was an interim order to consider their cases in accordance with the said Governmental Order and also the writ petition was pending.

For all the above reasons, the respondents are directed to consider the case of the petitioners for regularization of their services against aided vacancies by placing the matter before the committee as contemplated in G.O.Ms.No.301, dated 25-9-1997, since their case squarely fits into the teeth of clause (c) as noted supra. This exercise shall be done within a period of three (3) months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

13th August,2004

Prk

SPECIAL OFFICER

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Government of Andhra Pradesh, Education Department, Secretariat, Hyderabad.

2. Commissioner and Director of School Education,

A.P., Hyderabad.

3. Regional Joint Director of Education, Kakinada.

4. District Educational Officer, East Godavary,

Kakinada.

5. Secretary and Correspondent/Executive Officer,

S.K.V.T.English Medium School, Rajahmundry.

6.2CCs to G.P.for School Education, High Court Buildings, Hyderabad (O.U.T.)

7.2CD copies